

STATE OF MICHIGAN  
COURT OF APPEALS

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EMILY MARIE DUTY,

Plaintiff-Appellant,

v

MARY FREE BED REHABILITATION  
HOSPITAL,

Defendant-Appellee.

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UNPUBLISHED

March 25, 2014

No. 313336

Kent Circuit Court

LC No. 12-007006-NO

Before: GLEICHER, P.J., and HOEKSTRA and O'CONNELL, JJ.

PER CURIAM.

Plaintiff Emily Marie Duty sustained a spinal cord injury during an automobile accident. She received rehabilitation care at defendant Mary Free Bed Rehabilitation Hospital. Duty's complaint alleges that when a Mary Free Bed therapist placed her in a wheelchair lacking a safety-latched backrest, the backrest collapsed and spilled Duty to the floor. The circuit court determined that Duty's complaint sounded in professional negligence and dismissed it based on Duty's failure to comply with the statutory requirements governing medical malpractice actions. We reverse and remand for further proceedings.

I.

This case comes to us without the benefit of discovery as Mary Free Bed moved for and the circuit court granted summary disposition under MCR 2.116(C)(7) and (C)(8).<sup>1</sup> We review de novo the circuit court's ruling. *Bryant v Oakpointe Villa Nursing Ctr, Inc*, 471 Mich 411, 419; 684 NW2d 864 (2004). Pursuant to the court rules, we must accept all well-pleaded factual allegations as true and construe them in Duty's favor. *Bryant*, 471 Mich at 419; *Dalley v Dykema Gossett, PLLC*, 287 Mich App 296, 304-306; 788 NW2d 679 (2010). Given that Duty's

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<sup>1</sup> The subrule (C)(7) component of Mary Free Bed's summary disposition motion rests on the argument that because this case sounds in professional negligence and Duty failed to abide by the applicable notice and pleading requirements, her case is time-barred. Although motions brought under MCR 2.116(C)(7) may be supported with documentary evidence, none was submitted in this case.

allegations advance a liability theory within the common understanding of everyday jurors, we find no merit in Mary Free Bed's claim that this case sounds in professional negligence.

Duty's complaint sets forth the following pertinent factual allegations:

10. Between June 15, 2009 and August 12, 2009, Plaintiff participated in physical therapy sessions that involved transfers to and from a manual reclining wheelchair provided by Defendant Mary Free Bed and at times, under the supervision of Tracy Oostema.

11. These therapy session required that two safety latches on the wheelchair be engaged and secured with pins to lock the backrest, a high profile ROHO cushion, onto the wheelchair, to secure the backrest for Plaintiff's comfort and safety.

12. On or before August 12, 2009, Tracy Oostema told Plaintiff and her parents that Mary Free Bed did not have pins for the wheelchair backrest safety latches, but then represented to them and assured them that, in the absence of pins, the wheelchair should be okay and safe for Plaintiff to sit in.

13. On August 12, 2009, as Plaintiff was moving from her hospital bed to the wheelchair provided by Mary Free Bed Physical Therapy Department for rehabilitation, under the care and supervision of Tracy Oostema, the safety latches on the wheelchair backrest, without pins to secure them, disengaged and the backrest collapsed when Plaintiff was placed in it, causing her to fall out of the wheelchair and violently hyperextend her head, neck and spine and strike her head on the floor.

Oostema's negligence, the complaint avers, consists of:

providing Plaintiff with a wheelchair which was not in good and safe working order and which was dangerous and defective, when physical therapists, including Tracy Oostema, . . . knew or in the exercise of reasonable care, should have known, that the wheelchair was not in good and safe working order and was dangerous and defective, because the pins to the wheelchair backrest latches were missing, which would foreseeably cause the latches to come undone and the backrest to collapse, which is in fact what occurred[.]<sup>[2]</sup>

Mary Free Bed's summary disposition motion asserts that Oostema "unquestionably exercised medical judgment in determining the wheelchair, a medical device, was in safe working condition." According to Mary Free Bed, "[c]learly, a lay juror would require the testimony of an expert to understand whether a licensed physical therapist acted reasonably

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<sup>2</sup> The complaint alleged negligence and premises liability counts, but Duty has not challenged the dismissal of the latter count.

under these circumstances, and in compliance with the applicable standard of care.” The circuit court agreed and granted summary disposition to Mary Free Bed, reasoning: “the Court’s of the opinion that distribution of weight in a reclining chair, assisted with cushion and type of angle, it’s appropriate and would require the training and skills exercised by a medical professional.”

## II.

In reviewing summary disposition motions challenging whether a plaintiff’s complaint states a claim justifying relief, we deem true all well-pleaded allegations. *Dalley*, 287 Mich App at 304-305. Here, the allegations are simple. Duty’s complaint alleges that the wheelchair’s backrest was not latched to the wheelchair itself, and predictably collapsed when Duty was placed in the chair. Neither the complaint nor any record evidence addresses “distribution of weight” in the wheelchair, or the “type of angle” required for safe placement of the wheelchair’s backrest. Given the facts stated in the complaint, this case sounds in simple rather than professional negligence.

In *Bryant*, 471 Mich at 422, the Supreme Court set forth the two “defining characteristics” of a medical malpractice claim:

First, medical malpractice can occur only “within the course of a professional relationship.” [*Dorris v Detroit Osteopathic Hosp Corp*, 460 Mich 26, 45; 594 NW2d 455 (1999) (citation omitted)]. Second, claims of medical malpractice necessarily “raise questions involving medical judgment.” *Id.* at 46. Claims of ordinary negligence, by contrast, “raise issues that are within the common knowledge and experience of the [fact-finder].” *Id.* Therefore, a court must ask two fundamental questions in determining whether a claim sounds in ordinary negligence or medical malpractice: (1) whether the claim pertains to an action that occurred within the course of a professional relationship; and (2) whether the claim raises questions of medical judgment beyond the realm of common knowledge and experience. If both these questions are answered in the affirmative, the action is subject to the procedural and substantive requirements that govern medical malpractice actions.

The parties agree that Duty’s negligence claim arose within the course of a professional relationship. Regarding *Bryant*’s second prong, Duty asserts that Oostema’s decision to place her in wheelchair with an unsecured back “constituted heedlessness of a known hazard and simple, ordinary negligence rather than medical malpractice.”

*Bryant*’s second inquiry directs us to examine “whether the claim raises questions of medical judgment requiring expert testimony or, on the other hand, whether it alleges facts within the realm of a jury’s common knowledge and experience.” *Id.* at 423. If lay jurors are capable of drawing upon common knowledge and experience to evaluate whether a healthcare professional acted reasonably, the claim is for ordinary negligence. “If, on the other hand, the reasonableness of the action can be evaluated by a jury only after having been presented the standards of care pertaining to the medical issue before the jury explained by experts, a medical malpractice claim is involved.” *Id.*

The narrow allegation that Duty was placed in a wheelchair lacking a secure backrest sets forth a claim within the realm of common knowledge and experience. Laypersons are capable of understanding these simple facts. No expert testimony is necessary to establish that it is unreasonable to direct a patient to sit or lie in a wheelchair without a secure backrest, particularly a patient with a spinal cord injury. Nor do we detect any scientific or technical basis for expert testimony, given these allegations. Oostema apparently encountered no difficulty in explaining the wheelchair's latching mechanism to Duty's parents, and we conceive of no reason that lay jurors would struggle to understand that pins might be necessary to hold a wheelchair backrest in place. Because the reasonableness of Oostema's action is within "the realm of common knowledge and experience," lay jurors have no need of expert testimony. Accordingly, Duty's negligence claim relating to her placement in the wheelchair sounds in ordinary negligence and the circuit court should not have dismissed her complaint pursuant to MCR 2.116(C)(8). Because Duty timely filed her complaint within the three-year period applicable to general negligence actions, MCL 600.5805(10), the circuit court also erred by dismissing it under MCR 2.116(C)(7).<sup>3</sup>

We reverse the circuit court's summary disposition order and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. As the prevailing party, Duty may tax her costs. MCR 7.219.

/s/ Elizabeth L. Gleicher

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell

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<sup>3</sup> We are unpersuaded by Mary Free Bed's implication that Duty's initial (and unsuccessful) decision to pursue a medical malpractice action dooms her negligence case. Parties may plead in the alternative. "Inconsistent claims or defenses are not objectionable." MCR 2.111(A)(2).